

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION No. 04-11492-REK

MARIO LACY,
Plaintiff,

v.

CITY OF BOSTON, WILLIAM
FEENEY, KENNETH HEARNS and
MARC ACLOQUE,
Defendants.

**DEFENDANT KENNETH HEARNS'S ANSWER TO PLAINTIFF'S AMENDED
COMPLAINT WITH AFFIRMATIVE DEFENSES AND JURY DEMAND**

Now comes the Defendant Kenneth Hearns and answers the
Plaintiff's Amended Complaint as follows:

INTRODUCTION

1. The Defendant Kenneth Hearns considers paragraph one of the Amended Complaint as introductory only and not requiring a response. To the extent that paragraph one alleges facts, the Defendant denies such allegations.

JURISDICTION

2. The Defendant Kenneth Hearns considers paragraph two as a pure conclusion of law for which no response is required. To the extent there are factual allegations deemed inherent in the jurisdictional statement, the same are denied.

PARTIES

3. The Defendant Kenneth Hearns states that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph three of the Amended Complaint.
4. The Defendant Kenneth Hearns admits the allegations contained in paragraph four of the Amended Complaint.

5. The Defendant Kenneth Hearn admits the allegations contained in paragraph five of the Amended Complaint.
6. The Defendant Kenneth Hearn admits the allegations contained in paragraph six of the Amended Complaint.
7. The Defendant Kenneth Hearn admits the allegations contained in paragraph seven of the Amended Complaint.

FACTS

8. The Defendant Kenneth Hearn admits the allegations contained in paragraph eight of the Amended Complaint.
9. Defendant Kenneth Hearn admits the allegations contained in paragraph nine of the Amended Complaint.
10. The Defendant Kenneth Hearn states that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ten of the Amended Complaint.
11. The Defendant Kenneth Hearn denies the allegations contained in paragraph eleven of the Amended Complaint.
12. The Defendant Kenneth Hearn denies the allegations contained in paragraph twelve of the Amended Complaint.
13. The Defendant Kenneth Hearn denies the allegations contained in paragraph thirteen of the Amended Complaint.
14. The Defendant Kenneth Hearn denies the allegations contained in paragraph fourteen of the Amended Complaint.
15. The Defendant Kenneth Hearn denies the allegations contained in paragraph fifteen of the Amended Complaint.
16. The Defendant Kenneth Hearn denies the allegations contained in paragraph sixteen of the Amended Complaint.
17. The Defendant Kenneth Hearn denies the allegations contained in paragraph seventeen of the Amended Complaint.
18. The Defendant Kenneth Hearn denies the allegations contained in paragraph eighteen of the Amended Complaint.

19. The Defendant Kenneth Hearn denies the allegations contained in paragraph nineteen of the Amended Complaint.
20. The Defendant Kenneth Hearn denies the allegations contained in paragraph twenty of the Amended Complaint.
21. The Defendant Kenneth Hearn denies the allegations contained in paragraph twenty-one of the Amended Complaint.
22. The Defendant Kenneth Hearn denies the allegations contained in paragraph twenty-two of the Amended Complaint.
23. The Defendant Kenneth Hearn denies the allegations contained in paragraph twenty-three of the Amended Complaint.
24. The Defendant Kenneth Hearn states that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph twenty-four of the Amended Complaint.
25. The Defendant Kenneth Hearn states that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph twenty-five of the Amended Complaint.
26. The Defendant Kenneth Hearn states that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph twenty-six of the Amended Complaint.
27. The Defendant Kenneth Hearn states that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph twenty-seven of the Amended Complaint.
28. The Defendant Kenneth Hearn states that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph twenty-eight of the Amended Complaint.
29. Paragraph twenty nine of the Amended Complaint calls for a legal conclusion for which no answer is required. To the extent an answer is required, Defendant Kenneth Hearn denies the allegations contained in paragraph twenty-nine of the Amended Complaint.

30. Paragraph thirty of the Amended Complaint calls for a legal conclusion for which no answer is required. To the extent an answer is required, Defendant Kenneth Hearn denies the allegations contained in paragraph thirty of the Amended Complaint.
31. Paragraph thirty-one of the Amended Complaint calls for a legal conclusion for which no answer is required. To the extent an answer is required, Defendant Kenneth Hearn denies the allegations contained in paragraph thirty-one of the Amended Complaint.
32. The Defendant Kenneth Hearn denies the allegations contained in paragraph thirty-two of the Amended Complaint.
33. The Defendant Kenneth Hearn denies the allegations contained in paragraph thirty-three of the Amended Complaint.
34. The Defendant Kenneth Hearn states that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph thirty-four of the Amended Complaint.

COUNT I

VIOLATION OF 42 U.S.C. §1983 BY DEFENDANT POLICE OFFICERS

35. The Defendant Kenneth Hearn repeats and incorporates his answers to paragraphs one through thirty-four.
36. Paragraph thirty-six of the Amended Complaint calls for a legal conclusion for which no answer is required. To the extent an answer is required, Defendant Kenneth Hearn denies the allegations contained in paragraph twenty-nine of the Amended Complaint.

COUNT II

**VIOLATION OF MASSACHUSETTS CIVIL RIGHTS ACT: M.G.L. c. 12, §11I
BY DEFENDANT POLICE OFFICERS HEARN AND ACLOQUE**

37. The Defendant Kenneth Hearn repeats and incorporates his answers to paragraphs one through thirty-six.
38. Paragraph thirty-eight of the Amended Complaint calls for a legal conclusion for which no answer is required. To the

extent an answer is required, Defendant Kenneth Hearn denies the allegations contained in paragraph twenty-nine of the Amended Complaint.

COUNT III
VIOLATION OF 42 U.S.C. §1983 BY DEFENDANT CITY OF BOSTON

Paragraphs thirty nine through fifty contain allegations against a Defendant other than Kenneth Hearn, and therefore no response from Kenneth Hearn is required. To the extent paragraphs thirty-nine through fifty are construed to allege facts, Defendant Kenneth Hearn denies the same.

AFFIRMATIVE DEFENSES

First Affirmative Defense

Defendant Kenneth Hearn states that he was justified in his acts or conduct and that therefore the Plaintiff cannot recover.

Second Affirmative Defense

By way of affirmative defense, the Defendant Kenneth Hearn states that no act or omission by him was a proximate cause of damages allegedly sustained by the Plaintiff.

Third Affirmative Defense

Defendant Kenneth Hearn states that at all times pertinent to this action, he acted in good faith and belief that all actions were in accordance with the laws of the Commonwealth of Massachusetts and United States of America.

Fourth Affirmative Defense

Defendant Kenneth Hearn states that his acts and conduct were performed according to, and protected by, law and/or legal process, and that therefore the Plaintiff cannot recover.

Fifth Affirmative Defense

Defendant Kenneth Hearn states that the Plaintiff has failed to state a claim upon which relief can be granted.

Sixth Affirmative Defense

Defendant Kenneth Hearn states that any injury or damage suffered by the Plaintiff was caused by others for whose conduct the Defendant is not responsible.

Seventh Affirmative Defense

The actions of the Defendant Kenneth Hearn are entitled to protection by a grant of qualified immunity.

Eighth Affirmative Defense

Defendant Kenneth Hearn states that he is immune from suit while engaging in discretionary functions.

Ninth Affirmative Defense

Defendant Kenneth Hearn states that at all times relevant to this Amended Complaint he acted upon probable cause based upon reasonable grounds and that the circumstances justified his conduct.

Tenth Affirmative Defense

Defendant Kenneth Hearn states that he is a public employee entitled to immunity for negligent conduct committed during the scope of his employment pursuant to the Massachusetts Torts Claims Act.

JURY CLAIM

The Defendant Kenneth Hearn hereby demands a trial by jury on all counts and causes of action.

Respectfully Submitted
DEFENDANT, KENNETH HEARNS
Merita A. Hopkins
Corporation Counsel

By his attorneys:

/s/ Karen A. Glasgow

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